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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Simplified Entry

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to conduct a National Customs Automation Program (NCAP) test concerning Automated Commercial Environment (ACE) entry capability. This new capability will include functionality specific to the filing of entry data for formal and informal consumption entries. This functionality will simplify the entry process by allowing participants to submit 12 required and three (3) optional data elements to CBP at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States. This data will fulfill merchandise entry requirements and will allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. This initial phase of the test will be open to entries filed in the air transportation mode only. This notice invites parties to participate in the test, seeks public comment concerning any aspect of the planned test, describes the eligibility requirements for participation in the test, and outlines the development and evaluation methodology to be used in the test. This notice will be referred to as the Simplified Entry Notice.

DATES: Communication to CBP indicating interest in participation in this planned test is requested within five (5) business days from [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Comments may be submitted to the website indicated in the “Addresses” section below at any time throughout the test. The initial phase of the test will begin on or about December 31, 2011 and will run for approximately two years. CBP will begin an evaluation of the initial phase of the test after the test has been ongoing for approximately 90 days for purposes of possible extension or expansion.

ADDRESSES: Comments concerning this notice and indication of interest in participation in Simplified Entry should be submitted via e-mail to cbpsimplifiedprocess@dhs.gov. For a comment, please indicate “Simplified Entry Federal Register Notice” in the subject line of your e-mail.

FOR FURTHER INFORMATION CONTACT: For policy related questions, contact Steve Hilsen, Trade Policy and Programs, Office of International Trade, at stephen.hilsen@dhs.gov. For technical questions, contact Susan Maskell, Client Representative Branch, ACE Business Office, Office of International Trade, at susan.maskell@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993)

(Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS function. Each release will begin with a test and will end with mandatory compliance with the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases.

Through the NCAP process, CBP is testing the ACE Entry Summary, Accounts and Revenue (ESAR) capabilities. See the General Notice published August 26, 2008 (73 FR 50337) for more information. These new capabilities include functionality specific to the filing and processing of entry summaries for formal consumption entries and informal entries. These capabilities serve to assist the importer in completion of entry as required by the provisions of 19 U.S.C. 1484(a)(1)(B).

In addition, CBP is conducting an NCAP test concerning the transmission of required advance ocean and rail data through the Automated Commercial Environment (ACE). See the General Notice published October 20, 2010 (75 FR 64737) for more information.

In order to provide the link between the transmission of manifest data and the completion of entry summary functionality, CBP is now initiating a test to automate the merchandise entry and release process required prior to the filing of entry summaries. Most commonly, entry information is submitted to CBP electronically through the Automated Broker Interface (ABI) with the submission of the electronic equivalent of the CBP Form 3461 (see 19 U.S.C. 1484(a)(1)(A), 19 CFR 141.61, Subpart D to 19 CFR part 143, 19 CFR 142.3, and 19 CFR 142.4.) Entry may be filed prior to the arrival of merchandise in the United States in line with current filing requirements. CBP also allows entry and entry summary information to be filed with the Importer Security Filing that is required of all cargo arriving by vessel (see 19 CFR 149.6.) In all instances where entry information is filed prior to merchandise arrival, the merchandise is not authorized for release until it has arrived within the port limits with the intent to unlade (see 19 CFR 141.68(e).)

The current CBP Form 3461 contains 27 data elements. In an effort to simplify the merchandise release process, allow for more streamlined electronic transmission for the filing broker, stand alone filer, and/or importer, and assist importers in finalizing cargo movement logistics, CBP is announcing this test to reduce the number of data elements required to obtain release of products to 12 for cargo transported by air. The filer may

provide three other optional data elements that will be described below. The entry information required by this test will be in lieu of filing of the CBP Form 3461 or its electronic equivalent. The test will involve the transmission and acceptance of the data by CBP and the return of status messages concerning the shipment to the filer.

Authorization for the Test

The Customs Modernization provisions in the North American Free Trade Agreement Implementation Act provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. This test is authorized pursuant to § 101.9(b) of the CBP Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

Implementation of the Test Concerning Simplified Entry

In General

This document announces CBP's plan to conduct a new test concerning entry filing via a process known as Simplified Entry.

This filing is considered customs business for purposes of 19 U.S.C. 1641. The party filing Simplified Entry Data must have the right to make entry as provided in 19 U.S.C. 1484. Accordingly, only the importer or customs broker acting on the importer's behalf may submit this filing. This will not change as the test is rolled out.

Filing of Simplified Entry Data is in lieu of filing a CBP Form 3461 or its electronic equivalent. It is not in lieu of filing an entry summary as both an entry and entry summary as permitted by 19 CFR 142.19. All entry summaries resulting from Simplified Entry Data release must be made in ACE.

Initial Test Phase Rules

For the initial test phase the following rules apply:

The initial test is for entries filed in the air transportation mode.

The Simplified Entry filing will only be allowed for Type 01 and Type 11 consumption entries. Participants cannot file an entry summary in lieu of the simplified entry.

No formal entry filed under Simplified Entry can be released under a single transaction bond. A continuous bond must be used.

The filing of entries on split shipments or unassembled or disassembled entities will not be supported in the initial phase of the test.

The port of arrival and the port of entry and unlading must be the same for any Simplified Entry filed.

The manifested bill of lading quantity count and the release bill of lading quantity count covered by the Simplified Entry must match.

Once CBP sends a release message, participants cannot send another simplified entry to replace or amend the one previously filed.

Data Elements to be Filed

In lieu of filing CBP Form 3461 data, the importer or broker acting on behalf of the importer must file the following 12 data elements (to be known as the Simplified Entry Data Set or Simplified Entry Data) with CBP:

- 1) Importer of Record Number
- 2) Buyer name and address
- 3) Buyer Employer Identification Number (consignee number)
- 4) Seller name and address
- 5) Manufacturer/supplier name and address
- 6) HTS 10-digit number
- 7) Country of origin
- 8) Bill of lading/house air waybill number
- 9) Bill of lading issuer code
- 10) Entry number

11) Entry type

12) Estimated shipment value

In the air environment in the initial test phase, the entry filer, at his option, may also provide the additional three (3) data elements:

13) Ship to party name and address (optional)

14) Consolidator name and address (optional)

15) Container stuffing location (optional)

Data element (1) and data elements (6) through (12) are defined in the same manner as when they are used for entry filing on the CBP Form 3461. Data elements (2) through (5) and (13) through (15) are defined in accordance with the provisions of 19 CFR 149.3.

The Simplified Entry Data Set may be filed at any time prior to the arrival of the cargo in the United States port of arrival with the intent to unlade.

Functionality

Upon receipt of the Simplified Entry Data, CBP will make all decisions with regard to release of the merchandise and will transmit its cargo release decision to the filer.

Releases will be made at the house bill level. The merchandise will then be considered to

be entered upon its arrival in the port with the intent to unlade, as provided by current 19 CFR 141.68(e).

Admissibility Determinations by Other Government Agencies

For this first phase of the test, Simplified Entry Data will only be accepted for entries that do not fall under the admissibility jurisdiction of Other Government Agencies (OGAs).

Eligibility Requirements

Importer self-filers and customs brokers seeking to participate in and benefit from Simplified Entry functionality available in this test must have an ACE Portal Account and either be able to file ACE entry summaries or have evinced the intent to file entry summaries in ACE.

Parties seeking to participate in this test must use a software package that has completed ABI certification testing for ACE and offers the simplified entry message set prior to transmitting data under the test. See the General Notice of August 26, 2008 (73 FR 50337) for a complete discussion on procedures for obtaining an ACE Portal Account. Importers not self filing must be sure their broker has the capability to file entry summaries in ACE.

Importers seeking to participate must hold a Tier 2 status or higher in the Customs-Trade Partnership Against Terrorism (C-TPAT). Brokers seeking to participate must be C-TPAT certified. For more information on C-TPAT see:

http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/what_ctpat/ctpat_overview.xml

Test Participant Selection Criteria

CBP will limit the initial pilot of this test to nine (9) accounts. CBP reserves the right to raise this limit on the number of participants during the initial stages of the test should testing capabilities allow.

Specifically, CBP is looking for test participants to include at least:

- 1 or more Importer self-filers
- 1 or more Brokers

Any importers for whom brokers file Simplified Entries must meet the CTPAT Tier 2 criteria or higher.

When submitting a request to participate, a party should include information regarding estimated volume of entries anticipated to be filed under Simplified Entry and the identity of the ports where filings are likely to occur. CBP will use this information to determine resource requirements necessary to support the initial phase of the test.

Importer participants will be selected based upon entry filing volume and diversity of industries represented, giving consideration to the order in which participation requests are received.

Broker participants will be selected based upon entry filing volume, client diversity, and ports served, also with consideration given to the order in which participation requests are received.

Test Restrictions and Duration

The initial stages of the test will include only entries originating in the air environment. Land border arrivals, both truck and rail, and vessel ocean arrivals will be included in later stages of the test.

The initial phase of the test will begin on or about December 31, 2011, and will run for approximately two years. After the pilot begins, an evaluation will take place for purposes of extension or expansion of the test to other modes of transportation.

Regulatory Provisions Affected

Regulations that conflict with the terms and conditions of this test, namely regulations contained in parts 141, 142, and 143, including section 142.3, are suspended and overridden to the extent of the conflict for the duration of this test for those participants in this test and only to the extent of their participation in this test.

Future Expansion of the Test

Any future expansion in ACE including but not limited to any new Simplified Entry Data, the timing of submission of the data, or messaging between filers and CBP, will be announced via a separate **Federal Register** notice.

Confidentiality

All data submitted and entered into the ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

Application Process

Any party seeking to participate must submit an email to cbpsimplifiedprocess@dhs.gov with the subject heading “Simplified Entry Participant Request”. All emails must be received within five (5) business days of the date of publication of this Notice.

Misconduct

If a test participant fails to abide by the rules, procedures, or term and conditions of this and all other applicable **Federal Register** Notices, fails to exercise reasonable care in the execution of participant obligations, or otherwise fails to comply with all applicable laws and regulations, then the participant may be suspended from participation in this test and/or subjected to penalties, liquidated damages, and/or other administrative or judicial sanction. Additionally, CBP has the right to suspend a test participant based on a determination that an unacceptable compliance risk exists. Such proposed suspension will apprise the participant of the facts or conduct warranting suspension. Any decision proposing suspension may be appealed in writing to the Assistant Commissioner (Office of International Trade) within 15 days of the decision date. Should the participant appeal the notice of proposed suspension, the participant should address the facts or conduct charges contained in the notice and state how the participant has or will achieve compliance. However, in the case of willfulness or where public health interests are concerned, the suspension may be effective immediately.

Test Evaluation Criteria

All interested parties are invited to comment on any aspect of this test at any time. To ensure adequate feedback, participants are required to take part in an evaluation of this test. CBP needs comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end or implement this program by regulation. The final results of the evaluation will be published in the **Federal Register** and the Customs Bulletin as required by section 101.9 of the CBP regulations.

Paperwork Reduction Act

As noted above, CBP will be accepting only nine participants in the NCAP test. This means that fewer than ten persons will be subject to any information collections under the NCAP test. Accordingly, collections of information encompassed within this notice are exempted from the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502 and 3507).

Dated: November 2, 2011

Allen Gina
Assistant Commissioner,
Office of International Trade

